

25
A
DISCOURSE

Concerning the
Nature and Obligation
OF
OATHS.

WHEREIN

All the CASES which have any
Relation to OATHS enjoyned
by Governments, are briefly con-
sidered.

Dicta nihil metuere, nihil perjuriam curant.
Catull.

LONDON,

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By JOHN LOCKE, Esq;
of the Middle Temple, Barrister at Law.

LONDON,

Printed for J. ROBERTS, in the Oxford-Street,
in Westminster, 1706.

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THE PREFACE.

THE loose and odd Notions, which the Generality of Persons entertain concerning Oaths, have made it necessary to publish something, as to the Nature and Obligation of them. And a very great Divine of our Church, Dr. Saunderson, having treated at large on this Subject, in several Latin Lectures delivered to the University of Oxford, in the Year 1646, during the Time of the great Rebellion; it was thought more proper, and less liable to Objection, to translate them into English, than to compose a new Treatise; which must have notwithstanding been chiefly borrowed from him. He certainly, who could have no Prospect of these Times, declared his Mind without any Partiality in respect of them; which a Man would not be easily thought to be free from, who should at Present undertake to Write on this Subject. And if the Doctrine laid down by Him be true, which has been confirmed by the general Approbation of many Years, then it is to be look-

THE PREFACE.

ed upon as the Standard, to which all Oaths ought to be reduced. But these Lectures comprehending Abundance of Cases, which have no manner of Relation to Oaths enjoined by Governours, concerning which at present it is chiefly necessary to be informed; most of those Cases are omitted: Which has reduced this Discourse into a much narrower Compass, than otherwise it would have had: In which the Doctor's Method, than which nothing can be more exact, has been followed. And tho' some Scholastic Terms have been retained, yet they are so explained, as to be easily understood. I shall say no more as to the following Discourse, but shall conclude this Preface, with the Words of Monsieur La Placete, in relation to this Subject, translated by Mr. Kennet, B. I. Chap. 14.

'Tis certain, that his Sin who wilfully violates his Oath, is a Sin of the most heinous Nature, and beyond which we cannot easily conceive a further degree of Impiety and Guilt. By our Oath, we invoke God as a Witness to the Truth of what we affirm; and subject ourselves freely to his Vengeance, if we fail in the Execution: Wherefore by thus failing, we consent to be pursued, and overwhelmed by these terrible Judgments. What brutish Stupidity would it be to entertain the least Doubt, whether this will accordingly happen? What Idea must we have of God, how must we Affront and Insult him, if we believe not that he will surely keep his Word?

And afterwards,

Hence

The P R E F A C E.

Hence we may conclude, how just a Matter of Grief it is to every *Christian* Heart, to see Men of that Name and Profession, so forgetful in these Respects, as unworthily to trample on so holy and indispensable a Duty. What is more frequent amongst us, than Oaths rashly made, and lightly broken? Some there are, who having fallen under this double Unhappiness, and having therefore had Opportunity of Learning, by what had befallen them, how great an Imprudence it was voluntarily to bind themselves for the future, and to abridge themselves of the Liberty which God has given them, have yet again repeated the Offence, and have exposed themselves to the Danger of carrying it to its last and fatal Height, by violating with the same Impiety, the Oaths which they have made with the same Imprudence.

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C H A P. I.

The Definition and Division of an OATH.

AN Oath is a religious Act, in which God is invoked as a Witness, to confirm a thing doubtful to another. That an Oath is a religious Act, is evident. *First*, from Scripture, *Dent. 6. 13. Thou shalt fear the Lord thy God, and serve him, and shalt swear by his Name.* From whence the School men with one Voice conclude, that an Oath is an Act of religious Worship, due to God alone. *Secondly*, from the Consent of all Nations, among whom, tho' guided only by the Light of Nature, the Religion of an Oath has always been accounted most Holy. Insomuch that the Words *Sanctitas, Religio*, and the like, are by the best Heathen Writers, more frequently used in relation to Oaths than to any thing else; and an Oath it self, as if it was the most Sacred of all Actions, is by a peculiar Right called *Sacramentum*; from which also the French Word *Serment*, takes it's Derivation. *Thirdly*, from this plain Reason, Because an Oath does in it self tend to the Honor of God, being an Acknowledgment of his Divine Truth, Wisdom, Justice, and Power. For altho' a false Oath, or one lightly and rashly taken, do, on the Part of the Person swearing, betray an Irre-

rence and Contempt of God : Yet the Act of Swearing, does in it's own Nature, include a Reverence of the Divine Name. For since every Oath is used to confirm what a Man hath said, a d all Confirmation must be by something more certain and of greater Authority, according to that of the Apostle, *Heb. 6 16. For Men verily swear by the greater* : He who swears, does thereby acknowledge God to be his Superior, a Witness of the highest Authority, of infallible Truth, the Searcher of Hearts, and the most just and powerful Avenger of all Falshood and Perjury.

II. *In which God is invoked as a Witness.* In every Oath properly so named, God is either explicitly or implicitly called upon. For he who swears by an Idol, swears by that which he thinks to be God. And whoever swears by any Creature, does it in some Manner with respect to God ; he calls a Creature to witness, as a thing in which the Divine Truth, Goodness, and Power is clearly seen, as a thing which he enjoys by the Mercy of God, and of which he would not willingly be deprived by his Justice. For Instance, if a Man swear by his Life, his Soul, his Salvation, &c. 'tis the same thing as if he said, † By that God to whom I owe my Life, my Soul, from whom I expect Salvation, &c. And by this an Oath is distinguished from a bare Assertion or Promise,

Qui per salutem suam jurat, per Deum jurare videtur : respectu enim divini nominis ita jurat. Ulpian. l. 32 ff. de jurejur.

which

which are both made without any exprefs or tac
Intervention of the Divine Name. *As a Witn*
which distinguishes an Oath from a Vow,
which God is applied to as a Party, and not a
Witness. But it is not enough that God be applic
to *as a Witness*, unless he be also *invoked*. For Go
may be appealed to *as a Witness*, to confirm a *Thi*
doubtful, and yet there may be no Oath : As name
ly, when a Man quotes some Text of Scripture to
prove any thing in dispute. For it is one thing,
to cite God as a Witness, with respect to a Te
stimony long since given ; and another, to *invoke*
God as a Witness, with respect to a Testimony
just now to be given, in which last an Oath doth
properly and peculiarly consist.

III. *To confirm a Thing doubtful to another :*
Which Words contain both the Object and the
End of an Oath. The Matter or Object of an
Oath is *a thing * doubtful to another*, the Cer
tainty of which depends upon the Faith and
Credit of the Speaker, and cannot be discovered
any other way. Of this Nature are the Actions
of particular Persons, with their Circumstances.
And the *Confirmation* of such doubtful things is
the proper End of an Oath, according to that
of the Apostle, *Heb. 6. 16. an Oath for Confirma*
tion. For since many things are dubious and
uncertain, and cannot be proved but by Wit
nesses, whose Testimony is weak and fallible,
upon a twofold Defect, of Knowledge and
Goodness ; and yet it is expedient that Men should

Μαρτυρία Θεῷ περὶ πράξεως ἀποσβεστικῆς. Philo.

have some certainty and assurance in controverted and disputable Cases, without which there can be no such thing as Faith or Justice in the World : It is therefore necessary to have recourse to the Testimony of God, who can neither deceive, nor be deceived. This is the † Remedy, which by God's appointment, all Nations have made use of. This is, as the Apostle expresses it, *Heb. 6. 16. πάσης ἀντιλογίας πύξας, an end of all Strife.* Here all Human dispute and contradiction ought to stop. Not that whatever is Confirmed by Oath is certainly true. But because, in this mortal State, there can be no greater Human assurance given, than that which is delivered upon Oath, and by the invocation of the Divine Name, as it were, attested and confirmed from Heaven.

IV. Under this Definition, as thus unfolded, are comprehended all the four Kinds of *Causes*. Under the First part of it, *An Oath is a religious Act*, the Will of the Agent or Person swearing is included, as the primary *Efficient Cause*. The second Branch, *In which God is invoked as a witness*, shews the *Form* of an Oath. The third, *To confirm a Thing doubtful to another*, contains both the *Matter* and *End* of an Oath. For the proper *Matter*, about which an Oath is conversant, is a *Thing doubtful*, such as the bare Testimony of the Person speaking does not cause us firmly to believe. And the proper *End* of an Oath is, that a *Thing doubtful*, may, by invo-

† *Maximum remedium expediendum litium. l. i. ff. de jurejur.*

king the Testimony of God, have the greatest certainty of which it is capable.

V. Among the many Divisions of Oaths, the most eminent and most useful to the present Purpose, is that, whereby they are divided into *Affertory* and *Promissory*. An *Affertory* Oath is that, wherein God is invoked to witness the truth of a Thing either past or present. A *Promissory* Oath is that wherein God is invoked to witness the Truth of a Thing which is to come. When a Man swears, that such a thing was or was not so, is or is not so, this is *Affertory*. When a Man swears, that he will or will not do so and so hereafter, this is *Promissory*. And under a *Promissory* a *Comminatory* Oath is contained. For tho' properly speaking, *Promises* do rather signify something grateful to another, yet by a Figure the Name may also be extended to Threatnings, forasmuch as they both have respect to some future thing.

C H A P. II.

The Nature of an Obligation, and the several Kinds.

I. **A**FTER the Definition and Division of an Oath laid down in the foregoing Chapter, it will be proper in the next place to consider the Nature and Force of that Obligation under which we bring our selves by taking of an Oath. *Civilians* define an Obligation
to

to be, a *Bond or Tie of Law by which a Man is bound to pay what he owes.* Law being either *Divine and Natural*, or *Human and Civil*, there arises from hence a double Tie or Obligation namely a *Natural* one, which obliges naturally and *in foro interno*, by Virtue of a *Divine Law*; and a *Civil* one, which obliges civilly and *in foro externo*, by virtue of some *Human Law*. Some call the former an *Obligation of Equity*, and the latter an *Obligation of Justice*. In this matter relating to Oaths, we either solely or chiefly understand the first of these, viz. a *Natural or Moral Obligation*.

II. Besides this Distinction of Obligation with respect to the Law from whence it arises, there is also another with respect to the Debt which a Man by the Obligation is bound to pay. *Debt* is twofold, a *Debt of Duty*, which a Man by the Precept of the Law is bound to do; and a *Debt of Punishment*, which a Man by the Sanction of the Law is bound to suffer, in case he neglect his Duty. In the former sense, the mutual Duties of Charity are called Debts, because the Law of God enjoins them, according to that of the Apostle St. Paul, Rom. 13. 8. *Owe no Man any thing, but to love one another.* In the latter sense, Sins are called Debts, as in the Lord's Prayer, Mat. 6. 12. *Forgive us our Debts*; and eternal Death is said to be due, according to the same Apostle, Rom. 6. 23. *The wages of sin is death.* There is also a twofold Obligation which answers to this twofold Debt: An *Obligation to do the Duty*; and an *Obligation to suffer the Punish-*

Punishment. The Law intends primarily, directly, and by it self to oblige to Duty and Obedience, and obliges to Punishment only secondarily, indirectly, and by consequence; namely, upon supposition that the Duty has been either contemned or neglected. The Apostle has joined both these Obligations together, in that place where he treats of the Subjection due to the Supream Power, *Rom. 13. v. 5.* *Wherefore ye must needs be subject, not only for Wrath, but also for Conscience sake.* From which Words we may infer three Things relating to the Subject before us. 1. That a Man may be obliged to do one and the same Thing by a double Tie, a Tie of Duty, and a Tie of Punishment; this being plainly meant by *διὰ τὴν συνείδησιν*, and *διὰ τὴν ὀργάν*. 2. That with all good and pious Men, the Conscience of Duty ought to be more prevalent, than the Fear of Punishment. 3. That the Obligation of Conscience does arise precisely from the Debt of Duty. From whence it is also manifest, that when we speak of the Obligation of an Oath, as it is a Matter of Conscience, we do primarily and chiefly understand that Obligation by which we are bound to perform a Duty, not that whereby we are bound to undergo the Punishment due to Perjury.

III. These two Distinctions of Obligations being thus laid down, the next Thing to be shewed is, That an Oath is of it's own Nature obligatory. So that if a Man swear, not intending to bind himself, nay even intending not to bind

bind himself, he is nevertheless by taking an Oath *ipso facto* bound, as shall be fully proved hereafter. Cicero *Offic.* l. 3. says, *Nullum vinculum ad astringendam fidem majores nostri jurejurando arctius esse voluerunt.* But nothing can be plainer to this purpose than the words of Moses, *Numb.* 30. 2. *If a Man vow a vow unto the Lord, or swear an oath to bind his Soul with a bond; he shall not break or prophane his word, he shall do according to all that proceedeth out of his Mouth.* Where the Repetition to bind his Soul with a bond, according to the Hebrew Idiom, has a peculiar Emphasis, and very much augments the Signification. As if he had said, altho' a bare Promise do bind the Conscience, and when an Asseveration or Obtestation is added, do more strongly bind it: Yet of all things, a Vow which is made to God himself, and an Oath which is made to Men before God as a Witness, do most strongly oblige. Every Oath therefore, as well *Affertory* as *Promissory*, does bind the Conscience.

IV. As to the Obligation of a *Promissory Oath*, since it respects the time to come, there can be no doubt. But perhaps it may be reasonably doubted concerning the Obligation of an *Affertory Oath*, because all Obligation is to something Future, and it was said in the preceding Chapter, that the difference between an *Affertory* and *Promissory Oath* does consist in this, that the former respects something Past or Present, and the latter something Future. But the Solution is not difficult, *viz.* The Obligation of an Oath

as such, does not fall primarily upon the *Object* or Matter of the Oath; for so an *Affertory Oath*, whose *Object* is something Past or Present, cannot induce an Obligation for the Future: But the Obligation falls immediately and directly upon the *Subject*, namely, the Conscience of the Person swearing, who in either kind of Oath is bound to perform some Duty for the future. That this is so, will appear from this Consideration; That altho' every Obligation to Duty does no doubt respect a Duty to be performed in some future time: Yet this future Time, may be at a greater or less distance, or may even immediately succeed the Time when the Obligation is contracted. And it is easy to observe, if we consider the Matter intently, that in every Oath, as well *Affertory* as *Promissory*, respect is had to some future time. For whoever swears, does *ipso facto* oblige himself to speak the Truth in what he is about to say, whether it be concerning a thing Past or Present in an *Affertory*, or concerning a thing Future in a *Promissory* Oath. And this Obligation is common to both Kinds, belonging to an Oath, as it is an Oath. So that whoever takes an Oath in which his Words do not agree with his Mind, is guilty of violating his Duty, and consequently obnoxious to Punishment.

V. But, besides this common Obligation, which falls upon the Conscience of the Person swearing, there is also a further Obligation, proper and peculiar to a *Promissory Oath*, which falls upon the *Object* or Matter of the Oath;

by Virtue of which, a Man who swears promissorily is bound, not only to intend for the present to do what he swears, that so his Words may agree with his Mind; but also to endeavour for the future, as much as in him lies, to fulfil what he has sworn, that so his Deeds may likewise agree with his Words. He not only obliges himself, to promise That alone which he really intends; but also further obliges himself to perform all That which in Swearing he shall promise. Which the latter part of the Words of *Moses* do clearly shew, *he shall do according to all that proceedeth out of his Mouth.*

C H A P. III.

Some general Rules concerning the Obligation of OATHS.

I. **T**HE Natures and Kinds of Oaths, and Obligations being thus briefly stated, I shall lay down some Axioms or general Rules, drawn from the Fountain of natural Law, and approved by the consent of all Nations, which will be very useful in determining concerning the Obligation of Oaths in particular Cases.

First Rule. Plainness or Simplicity is chiefly required in an Oath. Such is the Nature and Obligation of an Oath, that whoever binds himself with that Sacred Tie, is obliged from his

his Heart sincerely to intend, and to the utmost of his Power diligently to endeavour, to perform all That which is promised, without any manner of Fraud, Deceit, or Simulation. Who ever shall do otherwise, according to *Moses breaks or prophanes his Word*, and is consequently guilty of Perjury either open or concealed. For there are generally reckoned three Kinds of Perjury. 1. When a Man swears, that any Thing is True, which he either thinks to be False, or at least doubts whether it be True or not. 2. When a Man promises upon Oath That which he does not design to perform. 3. When a Man does not take care and endeavour to perform what he has promised and designed. Of which the First is peculiar to an Assertory, the other Two belong to a Promissory Oath. Now if a Man is faulty any of these three Ways, it signifies little as to the Nature of Perjury, especially in the *Court of Conscience*, whether he commit it openly and bare-faced, or only silyly and under some pretence.

There are two Kinds of *Simulation* inconsistent with this *Simplicity* required in an Oath: One, which either goes before or accompanies the Act of Swearing, the other, which follows it: Of which tho' the former be the worse, yet neither of them is free from Perjury. *David* takes particular notice of both; of the First, *Ps.* 24. 3, 4. where to this Question, *Who shall ascend into the hill of the Lord?* amongst other things it is answered, *who hath not sworn deceitfully, viz.* with

an intent to deceive ; which excludes all Simulation at the time of Swearing. The other is mentioned, *Pf. 15. 4.* where to the like Questions, *Lord, who shall abide in thy Tabernacle? Who shall dwell in thy holy Hill?* it is answered amongst other Things, *He that sweareth to his own Hurt, and changeth not* ; as if he had said, He, who having bound himself with an Oath, chooses rather to perform what he has sworn, tho' with great Damage to himself, than upon the prospect of any temporal Advantage to violate his Faith : Whereby all Simulation after Swearing is excluded. And not only the primitive Christians, but even the wisest and best Heathens were of the same Opinion. Of the former *St. Augustin, Perjuri sunt, qui servatis verbis, expectationem eorum quibus juratum est deceperunt.* Of the latter *Tully, de Offic. lib. 3. Quod ita juratum est, ut mens deferentis conciperet fieri oportere, id servandum est.*

That Perjury is not avoided by either of these Simulations, I shall prove by four Reasons. 1. There are many places of Scripture, which require *Simplicity of Heart*, not only in the Worship of God, and the Duties of common Life, but more especially in Contracts, Promises, Vows and Oaths. To pass by others, in the Place above mentioned, *Numb. 30. 2.* it is in the plainest Words required of him who swears, that *he shall do according to all that proceedeth out of his Mouth. He shall do according to all, or as it is in the Vulgar, he shall altogether do, i. e. he must both at the time of swearing sincerely in-*
tend

tend, and afterwards to the utmost of his Power
 endeavour to do : *according to all, or according*
to that, which proceedeth out of his Mouth, i. e.
 according to that Sence, which the Words by
 him pronounced, after the common and recei-
 ved way of speaking, are apt to raise in the
 Mind of the Hearers, and not according to that
 Sence, which he, either whilst he Swears, by
 a secret Thought deceitfully intends, or after-
 wards, repenting of his Oath invents a new,
 by way of *Salvo* : The end of which proceed-
 ing, is not, that a Man may sincerely and fully
 perform the Substance of the Oath, as he ought,
 but only that he may seem to himself and o-
 thers in some Measure to have done it, and by
 this Artifice to have avoided very cautiously
 the Crime of Perjury †. 2. From the example
 of God himself, who according to the Apostle,
Heb. 6. 17, 18. Confirmed his Promises by an Oath,
that he might thereby more abundantly shew un-
to the Heirs of Promise the immutability of his
Counsel, to this very end, that those who believe
 in him *might have a strong consolation.* Which
 yet they could not have, if in those things
 which God hath promised with an Oath, it
 were possible for him to lie, and to de-
 ceive those to whom he hath sworn, by fru-
 strating their Hope and Expectation. But he
 would certainly deceive and frustrate the Hope

† *Quacunque arte verborum quis juret, Deus tamen, qui con-*
scientia testis est, ita hoc accipit sicut ille cui juratur intelligit.
 Isidorus.

of Believers, and that *Consolation* which arises from Hope, if either when he swore he did not intend to do what he promised, or changing afterwards his Mind, should not perform it in due time, and in that very Sence in which his Promises according to the Tenor of the Words ought plainly to be understood. *Pf. 110. 4. The Lord hath sworn, and will not repent. 132. 11. The Lord hath sworn in truth unto David, he will not turn from it.* 3. From the nature of Truth, which is the first and chiefest of those known Qualifications of an Oath, mentioned by the Prophet *Jeremiah, Ch. 4. 2. Thou shalt swear --- in truth, in judgment, and in righteousness.* To which *Truth*, not only That which is false is repugnant, but also That which is feigned; and disguised and palliated Falshood, as well as naked and open. Whoever has spoke what is false to his Neighbour, has certainly profaned his Word with a Lie; and he may justly be said to have spoken false to his Neighbour, by whom his Neighbour has been deceived in those Hopes, which from his Words he had reasonably conceived. Since therefore, a Lie is not avoided by either of these ways of Simulation, if thro' our Fault our Neighbour is deceived by giving Credit to our Words; It is certain, Perjury cannot be avoided by either, if thro' our Fault our Neighbour is deceived by giving Credit to our Oath: Perjury being nothing else but a *Lie confirmed by Oath.* For *Perjury* is altogether the same in respect of an Oath, that a *Lie* is in respect of a bare Promise. 4.

From

From the proper End of an Oath, which is, as before explained, *the Confirmation of a doubtful Thing*; namely, that concerning Things otherwise uncertain and depending on the Testimony of Man, there might be such certainty as is expedient in human Affairs. But this End would be altogether destroyed, and there could be no certainty or assurance among Men, if when a Man delivers particular Words upon Oath in order to obtain belief, he were at Liberty, either by some tacit ambiguity whilst he swears, or after Swearing by some new-invented and posthumous Comment, so to explain those words, as to make them lose their force, and render them altogether ineffectual. If either of these was lawful, an Oath would not be the *End* but the Beginning of *Strife*, and would continually occasion new Disputes and Contradictions. This Door being once opened, what can be imagined so False, but some shift and evasion may be found out, to clear it from being a Lie? And what wicked perverseness is it, to convert That into an Instrument of Deceit, which was designed by God as a Means to promote Faith and Credit among Men? Whatever is appointed by God, is to be used to that End for which it is appointed; and therefore the proper End of an Oath, ought to be the End of him who takes it: And that is, to cause belief in another, that he may be more assured and secure of the truth of a Thing doubtful to him before. But he who feigns, or says one Thing when he means another, endeavours to create a wrong

Be-

Belief in him to whom he speaks : and so not only permits another to be deceived, (which yet is contrary to charity, since he can and ought to hinder it) but even intends to deceive, which, besides that it is contrary to all justice and honesty, is also joined with the highest Injury to God, and the greatest Contempt of the divine Name. And surely no kind of Perjury seems to be more diametrically opposite, either to the Design of the Third Commandment, or even to the Words of it, *not to take God's Name in vain*, than That which arises from this Simulation. For the Word *Vanity*, as it properly and adequately comprehends whatever is in any manner false, so it most properly and peculiarly signifies That which is false, yet so as to bear some Shew and Resemblance of Truth. And as to the present Purpose, whoever promises any thing, invoking the Name of God to confirm it, all which notwithstanding comes to nothing, either by his not intending, or not performing what was promised, he directly and literally *takes the Name of God in vain*, violates the Divine Command, and is guilty of the heinous Sin of Perjury.

II. Second Rule. *The Obligation of an Oath is to be interpreted strictly.* There are three kinds of Interpretation of obscure or doubtful Matters, *Rigid, Favourable, and Just.* The *Rigid* and *Favourable* are the two Extreams, which proceed, the one from an Hatred, the other from an Affection to Persons. The *Just* and middle Interpretation is that, which without any respect

to Persons, discloses the genuine Sence, according to Justice and Equity. And this, if it appear plain enough from the Words, is in every thing to be retained. But because it often happens, that Dispute arises concerning the proper and natural Sence of Things which need Explication ; therefore, where by reason of the Doubtfulness of a thing, the just Interpretation cannot be had, a *prudential Latitude*, as I may call it, must of necessity be made use of. As the Moralists do not place the Mediocrity of Vertue in an indivisible Point, or an Arithmetic Proportion, but a Geometric. In dubious Matters therefore, according to the nature of the thing, sometimes a more strict, sometimes a more benign Interpretation supplies the place of a just one : Of which the *Strict*, being more remote from the Favourable, inclines towards the Rigid ; the *Benign*, declining from the Rigid, approaches nearer the Favourable. Just as in Morals, that Vertue, which is the Mean betwixt Avarice and Prodigality, the more remote it is from the one or the other, is called Liberality or Frugality. There are therefore some Things, whose nature is such as to require of right a Benign Interpretation ; as for Instance, according to our Law, Wills and Testaments. So likewise according to the Law of Charity, the Words and Actions of other Men, especially of Princes, Parents, and other Governours ; as also the Writings of Learned and Pious Men, unless there be a very just Cause of Suspicion to the contrary, are to be softened by a

Benign Interpretation: But there are many other Things, as Privileges, Bonds for Money, and most of those Things which induce an Obligation in Law, and among these, Oaths; in all which, when the Just Sence is doubted of, it is much better, and more agreeable to the Nature of them, to use a Strict than a Benign Interpretation.

When therefore it is said, That *the Obligation of an Oath is to be interpreted strictly*, 'tis thus to be understood; that the Intent and Meaning of an Oath, where it is plain enough from the Words, is altogether to be kept to: but where the Meaning is doubtful, we must take great Care, that we do not indulge our Affections too much, or allow ourselves too great a Latitude in Interpreting, the more easily to free ourselves from the Obligation by which we are bound; that we do not, for the sake of our own Profit and Advantage, put such a Sence upon any part of our Oath, as any wise and good Person, would not think of from the Words themselves. For this there are two Reasons. The one, in Respect of others, for fear of Scandal; lest some other Person, of less Understanding, induced by our Example, should think it Lawful for him to do the same, tho' ignorant of those Subtleties and nice Distinctions, by which alone we endeavour to clear ourselves from Perjury. The other, in respect of ourselves, for fear of Perjury; of which heinous Sin we are undoubtedly Guilty, if we are mistaken in our Benign Interpretation. This Reason is grounded upon that general and useful

ful Rule, *In doubtful Things always to take the safer Side.* But it is certainly much Safer not to Swear, where the Words of the proposed Oath, according to their common and obvious Sence, seem to contain something Unlawful, than by a loose Interpretation to soften them to our own Purpose, that we may the more securely swallow them down. It being evident, that such an Oath may be refused without any Danger of Perjury; but it is not evident, that it may be taken without any Fear or Danger of it.

But then on the other side, we must be careful, that this *Strict* Interpretation do not pass into a *Rigid* one. For Oaths as well as Privileges are not to be interpreted either too strictly, or too largely. Altho' therefore an Oath be never so simply exprest, and without any manner of Exception, yet several Exceptions and Conditions ought of common Right to be understood. Of which these Four are the chief, and to which most of the rest may be reduced. 1. *If God permit:* According to that of St. James, Chap. iv. 15. *If the Lord will, we shall live, and do this, or that.* So that, if one Man should swear to another, to bring him the Money which he owes him upon a certain Day; if at that time he either fall sick, or is robbed in his Journey, he is not guilty of Perjury. The Reason is plain, because, all things being subject to Divine Providence, and it not being in any Man's power to prevent Misfortunes, whoever has done what in him lay to perform his Pro-

mise, has satisfied his Oath. For *there being no Obligation to a thing impossible*, every Oath ought to be understood with this Clause, * *Unless it otherwise please God*, or the like. 2. *If it be lawful*: Because *there is no Obligation to a thing unlawful*. So that, tho' a Man should swear indefinitely to observe all the Statutes and Customs of any Society or Community; yet he is not obliged to observe any, but such as are lawful and honest. 3. † *Saving the Power of Superiors*. Upon which account, if a Son have sworn to do any thing in it self lawful, and the Father ignorant of it, command him to do something else, which hinders his doing what he swore, the Son is not obliged by his Oath: Because he is bound by Divine natural Law to obey his Father's Commands. In like manner, one who has sworn not to go out of his House, being cited by a lawful Judge, is bound notwithstanding his Oath to appear. The Reason is, because one Man's act ought not to prejudice the right of another. 4. *Things standing thus*, or remaining in the same State in which they now are. Thus, a Man who has sworn to restore to another his Sword, is not obliged to restore it to him if he be fallen Mad. And one who has sworn to marry a Woman, is not bound to do it, if she be with

* *In omni Voto vel Sacramento intelliguntur hujusmodi generales Conditiones, Si Deus voluerit, Si vixero, Si potero.* Glossa ad 22. qu. 2. c. B. Paulus.

† *In juramento semper jus Superioris intelligitur exceptum.* 2 Decret. 24. 19.

Child by another Man. These, and the like Conditions, of which the reason is plain, ought to be understood in every Oath ; and he would be too rigid an Interpreter who should go to exclude any of them.

III. Third Rule. *An Oath does not take away a former Obligation.* An Oath may induce an Obligation where there was none, or even confirm That which was before : But it cannot take away That which it finds, or superinduce another contrary to it. The Reason of which is this; because by every Obligation some Right accrues to another, whoever is bound being bound to another: And it seems very unjust, that by the meer Act of one Person, the Right of another should be infringed without his consent. Nor will it make any difference in the Case, whether the former obligation were *Natural* or *Acquired*. By a *Natural Obligation* we are bound to perform some Duty to another, which we owe him in our person, by virtue of the Law of Nature. Such is the mutual obligation, which is betwixt Father and Son, Prince and Subject. By an *Acquired Obligation* we are bound to perform some Duty to another, which we owe him by agreement, by virtue of of some voluntary act of our own. Such is the Obligation, which arises from Promises, Vows, Oaths, Treaties, and other human Contracts and Conventions. If therefore an Oath be tendered, containing any thing inconsistent with some former obligation, whether *Natural*

ral or Acquired ; namely, if it be contrary to the Duty owing to a Father or Prince, or repugnant to any Thing before lawfully sworn or promised, such Oath cannot with a safe Conscience either be taken, or having been taken be fulfilled. Whoever does either is perjured

IV. Fourth Rule. *There is no obligation to a thing impossible.* A Thing may be impossible either by it self, or by accident. *By it self* Three ways. 1. By *Impossibility of Nature*: As it is impossible for a Man to fly. 2. By *Impossibility of Fact*: As it is impossible for a Man at London to day, to meet another at Venice to morrow. 3. By *Impossibility of Right*: So That is said to be impossible to another, to which he has not a lawful Power. And to This relates That which is commonly said, *Id tantum possumus, quod jure possumus.* *We can do That only, which we have a Right to do.* Thus it is impossible for the Mayor of Oxford to confer a Doctor's Degree. If therefore a Man should swear to do any thing which is impossible any of these three ways, the Oath would be vain and null from the beginning, and consequently would not in the least oblige him to perform, or so much as to endeavour to perform, what he has sworn. But as to a thing, which is impossible only *by accident*, the case is somewhat different. As suppose a Person, having sworn to pay an hundred Pounds within a Month, which is not impossible in it self, should in the mean time be hindred by some unforeseen

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seen accident, so as not to be able to get together so large a Sum against the Time appointed; tho' he be not obliged in the Court of Conscience to do what he promised, which was to pay the whole Debt at the time prefixed, That having been now rendered impossible; yet he is obliged to do All that is in his power, namely, to pay as much, and as soon as he can. The reason of both is, because, since in this Case Impossibility alone hinders the Obligation; the Obligation is taken away only as to That which is become impossible, and remains in full force as to the rest. And therefore he who cannot perform All that which he ought, yet ought to perform All that which he can.

V. Fifth Rule. *There is no Obligation to a thing unlawful.* Whatever is contrary to any Precept in the Decalogue, or to good manners; whatever is repugnant to Piety towards God, or Charity towards our Neighbour; whatever is inconsistent with the publick Good, or with the Peace of Church, State, or private Families, All this is unlawful. The reason why these things do not oblige, is because they are contrary to Duty, whereas all Obligation is to Duty. Besides, whatever is unlawful, is, either immediately or by consequence, forbidden by God; and every Divine Prohibition obliges us not to do what is forbidden; which Obligation, according to the Third Rule, a subsequent Oath cannot take away. Nay, whoever has sworn
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to do That which cannot be done without Sin, is so far from being obliged to do it, that he is altogether obliged to the contrary. But you will say, not to fulfill what one has sworn, is Perjury. Why really, if the Thing sworn to was unlawful, a Man was perjured when he swore, but does not perjure himself again by doing contrary to his Oath. And to perform an unlawful Thing because a Man has sworn to do it, is, to add Wickedness to Perjury, instead of fulfilling one's Oath to fill up the measure of Perjury, and to persevere obstinately under the Guilt of it without Repentance.

But here we must take notice, that the Question, *Whether this or that Oath be lawful?* differs very much from this other, *Whether this or that Oath oblige?* For tho' it be certain, that what ought not to be performed, ought not likewise to be sworn: Yet it often happens, that That which ought not to have been sworn, yet having been sworn ought to be performed. Of this we have a plain Instance in the Covenant made by *Joshua* with the *Gibeonites*. The Reason of the Difference is this. When an Oath is therefore unlawful, because That which was sworn is a Thing unlawful; there we offend both by swearing and performing: As suppose a Man should swear to kill an innocent Person, and should do it, he would be guilty both of Perjury and Murder. And really such an Oath is in no manner obligatory: Which is the true Meaning of this last Rule. But when an Oath concerning a Thing lawful; becomes other-
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wise unlawful, from some external Defect, and by reason of some undue Circumstance; it may oblige the Person taking it to fulfill his Promise, unless some other Impediment appear. In this Case, That which is commonly said takes place, *Fieri non debet, factum valet. It ought not to be done, but being done it is valid.* An Oath therefore may be called unlawful upon two Accounts; in respect, either of *the Thing sworn*, or of *the Act of Swearing*. The former does not in the least oblige: but the latter does, if not otherwise hindered.

C H A P. IV.

Some Cases relating to the Matter of an Oath.

I. I Shall now consider some particular Cases, according to the Order of the Four Causes, *Material, Efficient, Formal, and Final*; insisting only on such as have some relation to the present Design. And first, concerning those which belong to the Matter of an Oath.

The *Matter* of an Oath is that Thing about which it is conversant, and for the Confirmation of which an Oath is tendered. This Matter is either *Definite* or *Indefinite*. That which is certain and *Definite*, may be considered, either according to its *Natural Being* or *Existence*, as whether a Thing be Possible or Impossible; or according to its *Moral Being* or *Quality*, as whether a Thing be Necessary, Unlawful, or

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Indifferent. I shall not at present say any thing concerning Things, as they are *Possible* or *Impossible*, but only as they are *Necessary*, *Unlawful*, or *Indifferent*.

II. A *Thing Necessary*, is that, which we are bound in duty to do by virtue of a Divine Command; so that if we do not perform it in due time and place, we are guilty of Sin: as, to support our Parents in Want, and the like. Such is the Matter of those Oaths which are required of Subjects concerning Allegiance and Fidelity to the King, and of Magistrates and Those who undertake any public Office, concerning their discharging it faithfully. There can be no Dispute about the Obligation of this kind of Oaths. For That, which even unsworn we are bound to perform, we are certainly much more bound to do, having sworn: There being a new Obligation added by the Oath, to that which we were before under from the Precept.

III. That is an *Unlawful Thing*, which cannot be done without Sin, in as much as it is contrary to some Divine Precept. Whoever swears to do any such thing, is guilty of Sin, and that whether he design or not, to perform what he swears. If he design to do it, he sins by willing an Unlawful thing, and so does not swear *in Righteousness*: If he do not design it, he sins by lying, and so does not swear *in Truth*. But whether he design it or not, it is certain that he is in no manner obliged. It happens very often, such is the Contempt of the Divine Majesty,

jestly, that, either thro' Impatience of Anger, or Fear of Danger, or Hope of Advantage, or Persuasion of Friends, or a certain false Modesty and Obsequiousness, many Men engage themselves by Oath to do such Things, as they either then certainly know to be unlawful, or which at least they afterwards easily understand, cannot be performed without Sin. And yet, such is the Perverseness of Human Judgment, blinded by the Delusions of the Devil, that you shall meet with very many, whom no Conscience of Duty can induce to do good, so determined by the Religion of an Oath to do ill, as even to think themselves obliged to fulfill whatever they have wickedly sworn. But contrary to this, it was proved under the Fifth Rule, that there is no Obligation to a thing Unlawful.

But since all Unlawful things are not of the same kind or degree, it is necessary to distinguish. Whatever is Unlawful, is so, either *of it self*, or *by Accident*. And whatever is Unlawful of it self, is so, either *Primarily* or *Secondarily*. That is Unlawful *of it self Primarily*, and, as I may say; in the highest degree, which is so Unlawful in its own nature, that it is forbidden by God to all Mankind. Of this kind is, whatever is opposite to the Divine Law contained in the Decalogue, whether it be a Sin of Omission or Commission; and whatever is inconsistent with Piety in the Worship of God, or with brotherly Love and Charity one towards another. In all Things thus Unlawful, the Fifth

Rule is simply and universally true, that to such things there can be Obligation from any Vow, Promise, or Oath. It is a grievous Sin to bring one's self under any such Engagement, but a much more grievous one * to fulfill it. Which whoever does, is guilty of a double Crime, the one, in doing That which is a direct Breach of some Command; the other, in irreverently abusing the Divine Name, and justifying Wickedness by the Authority of it.

That is Unlawful *of it self Secondly*, which is unlawful only to some Persons, either as Members of some Community, or as they are fixed in any particular Condition or State of Life. For whatever is contrary † to the Laws of any Community, is Unlawful to the Members of it; because it is forbid by God, not indeed primarily or immediately, but secondarily and mediately, by virtue of that general Command, which enjoins Obedience to Governours in all Lawful and Honest Things. In like manner, whatever is repugnant to the Nature of any Office, Employment, or Vocation, is Unlawful to those to whom they belong. For That which is Lawful to the Civil Magistrate, may not be so to an Ecclesiastical Person, and so on the contrary. The Case is the same in respect of Masters and Ser-

* *Impia est promissio quæ scelere adimpletur.* 22. qu. 4. c. i. malis.

† *Fusjurandum contra vim legum & auctoritatem juris nullus est momenti.* l. si quis ff. de legat. & fidei c.

vants, of Married and Unmarried Persons, and so of the rest. To all whom God has in general given this Law, that every one should faithfully perform what belongs to his own Vocation, and modestly contain himself within the Bounds of it. If therefore a Man swear to do any Thing, which is either forbidden by the Laws of the Community, or is inconsistent with that State of Life, or particular Vocation in which he is placed; or if he swear not to do, what is enjoined by those Laws, or proper to his own Employment; every such Oath, being concerning a thing Unlawful of it self secondarily, is therefore Unlawful, and does not Ordinarily oblige. I say *Ordinarily*; because perhaps there may be Cases, in which an Oath repugnant to some Law of a Community, or to some Calling or Employment, which therefore ought not to have been taken, yet having been taken may oblige.

IV. A Thing may be Unlawful *by Accident* two Ways; from the Error of the Person swearing, or from the ill Effect of the Thing sworn. As to the first. Suppose a Man promise with an Oath, to do something perhaps lawful in it self, which yet he thinks to be unlawful, or at least fears that it is so. The Question is, What is the Obligation? In answer to this, three Things may be said. 1. Such an Oath, whilst a Man is under his Mistake, cannot be taken without a great Sin. For he sins grievously, who does any Thing contrary even to an Erroneous Conscience. Because,
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since the Judgment of the Understanding is the nearest Rule of Action to every Person; the Will, if it do not follow this Judgment, declining from it's Rule, must necessarily go on one side. He who swears to a Thing which he only thinks Unlawful, would nevertheless swear, tho' it was really Unlawful. And therefore, that very Thing, which to another is Lawful, is Unlawful to Him; according to the Determination of the Apostle St. Paul, *Rom. 14. 14.* where he distinguishes betwixt That which is *Unclean of it self*, and That which is *Unclean only to some particular Person*; *There is nothing Unclean of it self; but to him that esteemeth any thing to be Unclean, to him it is Unclean.* 2. Such Oath does not oblige, according to the Third Rule. For an Oath cannot take away a former Obligation, or induce another contrary to it. But there was an Obligation arising from the Dictate of Conscience, precedent to the Oath thus taken against that Dictate. For the Dictate of Conscience, whether Right or Erroneous, always obliges, at least not to do any thing contrary to it. And a subsequent Oath cannot remove this Obligation, but is it self invalid, and has no Power to oblige. 3. If the Person swearing, being afterward better informed, discover and correct his Error; the Oath, which did not before, does from thence begin to oblige. For there is, as it were, a natural and inseparable Power of obliging inherent in an Oath; as a Stone has naturally and inseparably a Power of moving

ving downward, which Power is always ready to exert it self, unless hindered by some Obstacle, As therefore a Stone, which has been stopped for a while, needs not any new Power to put it in motion; but as soon as ever the Obstacle is removed, is by its own Force carried downward: So an Oath does immediately, and by its own natural Power oblige, when the Obligation of an Erroneous Conscience, which hindered it before, is removed.

A Thing may likewise be Unlawful *by Accident*, on account of the ill Effect of it, and that two ways; as it may be an hindrance of some Good Antecedent or Future, and the Cause, or at least Occasion of some Evil to the Person swearing, or to another.

A Thing *Indifferent* is that, which is neither commanded nor forbidden by any Law. This Indifference may proceed from two Causes, from the Will of the Legislator neither commanding nor forbidding, or from the Trivialness of the Thing. Every Oath concerning a Thing indifferent on this last account is Unlawful, but yet ought to be observed.

C H A P. V.

Some Cases relating to the Efficient Cause of an OATH.

I. **W**E are next to consider some Difficulties relating to the *Efficient Cause* of an Oath; which, as it concerns our purpose, is twofold, *Agent* and *Impulsive*.

The *Agent* is twofold, *Principal* and *Remote*. In both whom may be considered the *Condition of the Person*, and the *Extent of the Obligation*.

In the *Principal Agent*, or Person swearing, two Conditions or Qualifications are required, *Judgment* and *Power*.

The former of these we shall at present pass by, and speak only of the latter; concerning which This is the Case. Suppose a Servant, a Son, a Wife, or a Subject, being under the Power and Command of a Master, a Father, an Husband, or a Prince; or suppose any one, who is subject to another's Power, so as not to be intirely *sui juris*, should take an Oath without the Permission of his respective Superior: The Question is, Whether, and how far such an Oath is Valid? The Answer. It is not Lawful for him, who is subject to the Power of another Man, to determine any thing by Oath concerning those Matters in which he is subject, without the expresse, or at least tacit Consent of his Superior. If he do otherwise, he sins; neither is he obliged to do, but not to do

do, what he has sworn, unless he obtain afterwards his Superior's leave. This is at large explained by *Moses*, *Numb.* 30. in case of a *Vow* or *Oath* (of both which the obliging Power is the same) made by a Virgin *being in her Father's House*, or by a Wife in her Husband's. The Sum of which is this, The Vow of a Virgin, if her Father know of it, and do not *disallow* it, *shall stand*; But if he *disallow*, or contradict it, it is *utterly Void*. The same with respect to Husband and Wife. And This is to be applied to all others, who are subject to another's Power, as far as they are subject; for these two Reasons. 1. Because he does an Injury to another, who of his own Right determines any thing belonging to another's Right: and no one is bound to do Injury to another, there being no Obligation to a Thing Unlawful, according the Fifth Rule. 2. Because every one is bound out of Duty to be subject to his Superior in those Things in which he is his Superior, and to obey his Will: Which Obligation, according to the Third Rule, a subsequent Oath cannot take away. So that the Oath of a Person subject to another, without his Consent, is neither Lawful nor Obligatory.

But This is to be understood with a double Exception; one regarding the *Person swearing*, the other the *Superior's consent*. 1. As to the Person swearing; there is scarce any one, who has the use of Reason, so intirely under another's Power, but that he is *sui juris*, or in his own, at least as to some Things. And con-

cerning these, every one may determine at his pleasure, without consulting his Superior; and may by his own Act bring himself under an Obligation. 2. As to the Superior's Consent, it is not necessary that this should be given Expressly before, but a Tacit Consent is sufficient, and that either Antecedent or Subsequent. By a *Tacit Antecedent Consent*, I understand, when from the Equity or Trivialness of the Thing, or from any other probable Cause, it may reasonably be presumed, that the Superior if consulted, would readily consent, or at least not oppose. By a *Tacit Subsequent Consent*, I mean, when the Superior, as soon as ever he is apprized of the Promise, does not presently and openly contradict it, or shew by some certain Token, that he disallows of what has been done. That this Dissent must be declared presently and openly is evident from the Chapter just now mentioned.

II. In the *Remote Agent* who requires the Oath, or to whom it is taken, two Conditions or Qualifications may likewise be considered, *Authority* and *Faith*.

As to *Authority*. If the Person requiring the Oath be a *Lawful Superior*, acknowledged by us as such, and require no other Oath of us, but what is appointed by Law, or established by long and approved Custom; there is no Doubt but that such an Oath may both lawfully be taken, and ought faithfully to be observed. But when He who exacts the Oath seems to have no Right to do it, but to have usurped

a Power not belonging to him ; it may deservedly be doubted, both whether it is Lawful to take an Oath thus required ; and whether being taken, it does at all, or how far it does oblige. To this it is to be said, 1. That a Man of Piety and Courage, ought as much as he can, to decline all Oaths imposed by one who has no Lawful Authority. Not only, because it is common for Usurpers to compell those who are under them to promise unjust and wicked Things ; but also because every Man is bound to defend his own Right and Freedom to the utmost, and not slavishly to deliver himself up to the Tyranny of another. 2. But if besides Command, such Force be added as a Man cannot resist, insomuch that there is no refusing without the greatest Peril : There a Religious Man, in order to avoid some grievous Inconvenience, may take such an Oath, tho' it must be done with Regret, and some plain Indication of Reluctance. Provided always, that the Words of the Oath, do not contain in them (which in this Case is very rare) any Thing contrary to the Laws of God, the Laws of the Land, or to the Right of any third Person. For if they do, a Man ought to refuse, even with the hazard of his Life, and to suffer any thing, rather than bring himself under a wicked Obligation. 3. If a Man have taken an Oath imposed by Unlawful Authority, but blameable on no other Account, he is altogether obliged to fulfill what he has sworn.

III. The other Qualification to be considered in the Person to whom the Oath is taken, is *Faith*. Where it may be enquired, how far the want of it hinders the Obligation; as suppose the Person sworn to, be an Infidel or Heretic, or have broken his Faith with us. As to the former, it is, no doubt, Lawful to take an Oath to an Infidel or Heretic, and a Duty to observe it exactly. As to the latter, If two Persons bind themselves by mutual Oaths, to perform mutual Promises, which have a mutual Respect, tho' the Condition be not expressed; whoever first breaks his Promise, discharges the other from his. For Instance, if a Master swear to give a Servant Ten Pounds by the Year, and the Servant on the other side swear to serve his Master seven Years. But if two Men bind themselves mutually by Promises of a different kind, or at a different Time, or which have otherwise no mutual Respect: The Faith violated by one does not free the other from his Obligation, but either of them is bound to observe what he has sworn, tho' the other have not performed his Part. For Example; A King, simply and without any Respect to the Fidelity of his Subjects, swears, that he will govern justly, and according to the Laws: The Subjects at another Time, simply and without any Respect to the Duty of the Prince, swear that they will yield him due Fidelity and Obedience. Both the one and the others are obliged to perform their proper Duty: So that the

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King is not absolved from his Oath, tho' his Subjects deny him due Obedience; nor the Subjects cleared from theirs, tho' the King govern contrary to Law and Justice.

IV. The Conditions or Qualifications of the Principal and Remote Agents being considered, we are next to take notice of the *Extent of the Obligation* in respect of both.

As to the Extent of the Obligation in respect of the *Principal Agent*, it might be enquired, Whether and how far an Oath obliges the Heirs and Successors of him who takes it? But This is not to our present Purpose.

As to the Extent of the Obligation in respect of the *Remote Agent*, it may be enquired, Whether a Man, who has sworn to perform any thing to another, he being dead, be obliged to perform it to his Heir or Successor? I Answer, He is *Ordinarily* obliged. 'Tis certain he is obliged, if it was expressed that he was to do it to another, or to his Heir. And if it was not so exprest, if the Oath was taken to another, on the account of his *Dignity* or *Office*, it does likewise so oblige. Because the Dignity or Office does not change with the Person. So that if a Subject or Soldier swear Fidelity to a King or General, the Oath is to be looked upon as taken to those who lawfully and rightfully succeed in the same Dignity. But where from the Nature of the Thing promised, and other Circumstances, it may reasonably be presumed, that the Person swearing intended only a personal Promise to him
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to whom he swore, and not to his Successors; there the Obligation of the Oath does not extend to them.

V. Having done with the *Efficient Cause*, as it signifies the *Agent*, we are now to consider the *Efficient Impulsive Cause*, which is twofold, *Internal* and *External*.

The *Internal Impulsive Cause* is that which proceeds from the Mind of the Person swearing; as when a Man does it, from the mere Motion of his own Will, or out of Anger, Love, or any other Passion. Which need not be here insisted upon.

The *External Impulsive Cause* is that which proceeds from other Persons; and is twofold, *Deceit* and *Force*. The last of which I shall only speak to, namely, when an Oath is extorted by Fear, against the Will of the Person swearing. In which, two Cases are to be examined. The first (which perhaps might have been more properly ranged under the *Internal Impulsive Cause*) is, when the Fear is upon a small or light Account. As when a Man, for fear of being unjustly censured or exposed, or of offending some great Person, promises upon Oath to do something inconvenient to himself, and which, were it not for that Fear, he would neither do nor promise. In Answer to This, That is first to be repeated, which is strictly to be observed in this whole Business of Oaths, if any Thing is proposed to be sworn, which is contrary to the Law of God, to the Duty of a Christian, to the Laws of the Common-wealth,

wealth, or to any antecedent Obligation; a Man ought not, upon any Prospect of Advantage, or Fear of Danger, to take such an Oath, or having taken it to fulfill it. This being supposed, I say, that a Man of Courage (that is, of Religion, for he cannot be Religious who is not Courageous) ought to despise a vain and light Fear, and with Constancy and Resolution to refuse every such Oath. For according to *Solomon*, *Prov. 28. 1. The Righteous are bold as a Lion.* Of which Boldness and Courage whoever is destitute, will scarce ever do any Thing extraordinary, worthy of a good Man. *For he that observeth the Wind shall not sow, and he that regardeth the Clouds shall not reap, Eccl. 11. 4.* Nay, it can scarce be otherwise, but that such a Person must do many things unworthy of a good Man: *Prov. 29. 25. For the fear of Man bringeth a snare.* But if a Man thro' Narrowness of Mind has unwarily suffered himself to be caught in this Snare, he has bound his Soul with a Bond, and is obliged to do what he has promised.

The other Case is, where there is a great and just Fear of Force, which may affect even a constant Person. Such is the Fear of Imprisonment, of the Loss of all one's Goods, of Torment, and of Death. To This it is to be said, 1. As before, if the Oath contain any thing unlawful in it self, it ought not to be taken by an honest Man, no not even to avoid Death. Consider those admirable Words of an Heathen,

Iustum

*Iustum & tenacem propositi virum
Non civium ardor prava iubentium,
Non vultus instantis tyranni,
Mente quatit solidâ.* Hor. Lib. 3. Ode 3.

*The Man who's just, and resolutely true
To what he once has well design'd,
Not all the Fury of the lawless Crew,
Nor the stern Frowns which threat'ning Tyrants shew,
Can change; or shake his solid Mind.*

2. If with grievous Threats of Force, any Thing be required, which is neither unlawful in it self, nor hurtful to any other Person, but only more or less inconvenient and disadvantageous to him who is to swear; it is both lawful to promise it, and to confirm the Promise with an Oath: As when a Man meets with Robbers, who threaten to kill him, unless he will swear to redeem his Life at a certain Price. The Reason is, because of two Evils, it becomes a prudent Man to choose the least, and the Loss of his Money is a less Evil than that of his Life. 3. Such an Oath as this obliges, the Promise ought to be performed, and the Money agreed upon to be paid.

C H A P.

C H A P. VI.

Some Cases relating to the Form, and End, of an Oath.

I. **T**HAT which relates to the *Formal Cause* of an Oath, is in the next place to be examined. *Form* is twofold, *External* and *Internal*.

The Signs or Words of an Oath, because perceived by our outward Senses, I call the *External Form*. In respect of which, an Oath may consist, either of Signs alone, or Words alone, or of Signs and Words together. As to the last, Men are said to swear in *conceived Words*, when every one repeats the prescribed Form; or else when only one repeats it, and the rest signify their Consent by some Word or Sign. The Swearing in conceived Words, and at the same time touching the holy Gospels, is a Ceremony derived down to us from the first Ages of Christianity. Every such Oath, in which besides the Words pronounced, some external bodily Motion is added, as the lifting up the Right Hand, the touching a Book, or the like, is properly called a *Corporal Oath*.

Here it may be inquired, Whether a *Solemn* or *Corporal* Oath do more strongly oblige than a Simple one, so that the Perjury in violating the former is more heinous than in breaking the latter? 1. The Casuists both of the Roman and Reformed Churches do agree, that the Solemnity of the Act does aggravate the Of-
 G fence

fence in an Oath as well as a Vow ; forasmuch as the Reason is, generally speaking, the same in both, especially as to their obliging Power. 2. Altho' the Perjury be more heinous, yet a Solemn Oath of it self, and in its own Nature, does not oblige more than a Simple one. Because, the Obligation of an Oath as such, (for it obliges likewise as including a Promise) does arise precisely from God's being invoked as a Witness. But God is invoked as a Witness no less in a Simple Oath, than in a Solemn or Corporal one: the Invocation being made by the Words, and not by the Corporal Motion or concomitant Sign, in which the Solemnity of an Oath does consist. 3. It is therefore by Accident, that the Solemnity aggravates the Perjury, but yet necessarily and inseparably, not contingently and separably ; and that for two Reasons. *First*, The Perjury of a Solemn Oath is more heinous, upon Account of the *greater Deliberation*. For the Solemnity of External Rites is enjoined, in order to strike a deeper Reverence and Sence of Religion into the Heart ; that so a Man may perform the Act with greater attention and deliberation of Mind. And every Sin, *cæteris paribus*, is so much the more heinous, by how much it is committed against the more deliberate Act of the Will. *Secondly*, The Perjury of a Solemn Oath is more heinous, upon account of the *greater Scandal*. Because the more Solemnly any Thing is done, it is taken Notice of the more carefully, and by the more Persons : And therefore, if

if a Man act wickedly at such a Time, the Example will be more notorious and pernicious.

II. The *Internal Form* consists in the Sence and Meaning of the Words; so called, because it is perceived by the inward Act of the Mind. And This is to be understood, in respect only of those Words which contain the Matter or Promise sworn to, and not in respect of those in which God is invoked. The Words, in which the Matter or Promise of the Oath is contained, must be either *Clear* or *Ambiguous*.

Where the Words are *Clear*, there are three Cases which deserve a particular Consideration. The First is, When the Words, according to the common manner of speaking, are clear enough of themselves; but the Person swearing, not intending to oblige himself in that Sence which they plainly carry, imagines a different Sence to himself, of which, by Reason of the Ambiguity of some Word or Expression, they are in some manner capable. As suppose a Priest of the Church of *Rome* should swear, that *he is not a Romish Priest*, meaning that he is not *Romish* but *English* by Birth. Or suppose a General should swear a Truce with the Enemy for Ten Days, and yet plunder their Camp in the Night. This is that *Verbal Equivocation*, which some Casuists, but especially the Jesuits, defend and put in Practice. But the old *Romans* were of a quite contrary Opinion: For *Livy, Hist. Lib. 22.* gives an Account of Ten Roman Captives, who were dismissed by

Hannibal, upon swearing that they would return into his Camp; of whom One, *a Person not at all of a Roman Spirit*, says the Historian, pretending to have forgot something, returned the same Day into the Camp, and then followed his Companions, imagining that he had by so doing freed himself from his Oath. But this deceitful Subtlety of his was looked upon to be so base and vile, that it was decreed by the Senate, that he should be seized and sent back to *Hannibal*. It is therefore to be laid down as certain, that the Person who swears after this manner, both sins in swearing equivocally, and is, notwithstanding the Equivocation, bound in Conscience to make good his Promise, according to the plain and obvious Meaning of the Words: If he do not, he is Guilty of Perjury.

I have already given some Reasons for this Assertion, in confirming the First Rule. I shall now add others, but briefly. 1. Because an Oath ought to be understood after the most plain and simple manner, which is the Sum of that Rule: With which Simplicity, this Artifice of studied Ambiguity is not at all consistent. 2. Because it is a great Prophanation of the Divine Name, to invoke God as an Inspector of the Heart, and a Witness to the Truth of those Words, which do not agree with That which the Person swearing keeps concealed in his Heart. What is this, but as far as it is in a Man's Power, to make that God, who can neither deceive, nor be deceived, an Im-

postor,

postor, and a Patron of the vilest Simulation and Deceit? 3. Because such Equivocation is contrary to the very Design and Nature of an Oath; of which the chief Use is, that it may be an *End of all Strife*, that in Things otherwise Uncertain, so much Assurance or Certainty may be had, as is expedient to Human Affairs. But all this Certainty, which is sought for from an Oath, is destroyed by an Equivocation: For what Certainty can there be from that Answer, the Meaning of which is uncertain? Controversies cannot possibly be ended after this manner, but must necessarily be increased. 4. Because the Person swearing thus, knowingly deceives his Neighbour, contrary to what is required, *Psf. 24. 4. not to swear Deceitfully*. 5. Because, as is an Affirmation or Negation in an Assertory Oath, such is an Engagement in a Promissory; which, since it contains an Answer to a Question, or Interrogation proposed by the Person giving the Oath, if the Answer be not agreeable to the Interrogation, it is a Lie. For the Question and Answer make as it were one Proposition, which is to be looked upon as altogether false, if the Answer be made in a different Sence from that in which the Question is proposed.

Neither does that *Restriction*, which the Jesuits are wont to put in, at all help the Matter, *viz.* That it is not Lawful to use this Equivocation commonly and ordinarily, but only *coram non iudice*, or before One, who either has no Right to require an Oath, or requires it without

without just Cause, or in an undue Matter, or in some such Case. But 1. This is said by them *gratis*, without any Authority from Scripture, or the Primitive Church, or even any solid and substantial Reason. 2. The Force of those Arguments brought just now to the contrary, is neither wholly taken away, nor in the least weakened by this Restriction. 3. Altho' it be granted, that an unjust Force may weaken an Obligation made to Man, because it is not Equitable that any one by an Unjust Act should acquire a Right: Yet no Injury done us by Men, can afford a Just Cause of doing an Injury to God, namely, by taking away that Obligation, which we lye under to him, as the Inspector of Hearts, to whom there accrues a Right from every Oath, upon account of the Invocation of his Name therein. 4. This Jesuitical Doctrine gives a Licence to Wicked Men, to lie and forswear themselves at pleasure, even notwithstanding this Restriction; since it allows them the whole Power of judging when this Equivocation is proper. If therefore any Man, contrary to Right and Justice, is required to swear; he ought either directly to refuse the Oath, or to take it in the same Sence in which it is given, without any Simulation or Equivocation.

III. The Second Case is concerning *Mental Reservation*, which the Jesuits defend by the same Reason, and in which they prescribe the same Restriction. As suppose a *Romish* Priest, being required so to do by an Heretical Magistrate,

gistrate, swear, that *he is no Priest*, meaning of *Bacchus* or *Apollo*. Or suppose a Person, to secure his Life, swear to pay a certain Sum of Mony to a Robber, meaning *in case he owe it him, or if he shall demand it before a Magistrate*. As this Mental Reservation is built upon almost the same Foundation with a Verbal Equivocation, so it is overturned by the same Arguments. For it takes away all Faith and Assurance among Men, makes God an Impostor, deceives our Neighbour, perverts the very End and Use of an Oath, and opens a Gate to all manner of Lying and Perjury. And this *Reservation* is more pernicious than *Equivocation*, in as much as it is more difficultly prevented. For where an *Equivocation* is foreseen or suspected, it may be provided against, by so explaining the Words of the Oath, that there can be no Ambiguity. But no Care or Exactness whatsoever can hinder the using of Reservations by him who thinks them lawful.

Mille adde catenas :

Effugiet tamen hæc sceleratus vincula Proteus.

Horat. L. 2. S. 3.

Add a thousand Ties :

Tet all their Force this wicked Proteus flies.

For thus the Jesuits will take an Oath, in which there are these very Words, *Without any Equivocation or mental Reservation whatsoever*, by using another Reservation at the same time, viz. *Which I shall tell you.* To

To vindicate themselves from Perjury, they argue thus. The intire Sentence composed of a verbal and a mental one, if taken together is true. And they see no Reason, why a Man may not, if he please, compose his Speech of verbal and mental Terms: For if when a Man prays, and says, *Give us this Day* aloud, and only thinks the rest in his Mind *our daily Bread*, the whole Petition is both lawful and grateful to God, why may he not do the same in an Oath. To answer fully this little Quirk of the Jesuits,

1. It is much to be wondered, that these acute Disputants do not perceive, that the Faith of all Oaths, Promises, and human Contracts, is undermined by this Defence. For this Argument, if it have any Weight, will likewise prove, that it is as lawful to use these Reservations before a competent Judge, and in a due matter, (which yet they deny) as before an incompetent Judge, and in an undue matter: since the Sentence composed of a verbal and mental one, is, in either Case, of the same Truth or Falseness. And This is a sufficient Answer to the Men.

2. But to the Thing, I say, that a Sentence composed after this manner, may be allowed of, when a Man thinks any thing by himself, as in private Meditation; or when the matter is transacted only betwixt God and himself, as in Prayer and Thanksgiving. But where the Business is with Men, as in Oaths, in which, Testimony must be given for as to be heard and understood, there this mixed Sentence of Verbal and Mental is by no means

they to be admitted. The Reason of this Difference is manifest ; because That which a Man thinks, is as much known to God and to himself, as what he speaks. So that with those who meditate or pray, it is the same Thing, as to the Truth or Falshood of the Sentence, whether they pronounce the whole, or only a part of it, or none at all. But before Men, who know not the Thoughts of the Heart, but only as they are revealed by Speech, or some other External Sign, the Truth or Falshood of a Sentence is to be esteemed from those Things alone, which can testify and declare something to the Hearers. Which since these *Reservations* in the Mind cannot do, in judging of the Truth in this Case, Regard is only to be taken, of the Words pronounced, and not of any Mental Reservation.

IV. The Third Case relates to the Performance of the Oath. For as, at the Time of swearing, a Man ought to design to fulfill his Promise, in the same Sence in which it is proposed, without any Equivocation, or Mental Reservation : So after he has sworn, he must diligently endeavour to fulfill it, in the same Sence in which it was sworn, without any Subterfuge or Evasion. And it is one Kind of Perjury, to distort and draw the Words, while a Man swears, to another Sence, different from that in which the Hearers understand them : So it is another, when you have sworn rightly, not to act sincerely, but by some new invented Comment (saving the Words) to decline and elude the Force of the Oath. This Practice is

too common. From which we may infer two or three useful Things. 1. That even Wicked Men, who have little or no Regard to what is Just and Honest, yet by a certain Natural Sense, think themselves in some measure obliged by an Oath. 2. That unless we strongly resist our wicked Affections, there is great Danger, lest that Spark of Natural Light, which remains in us, should be by them either quite extinguished, or at least so sadly obscured, as to make us more solicitous to palliate Perjury by some Art, than sincerely to avoid it. 3. That whoever desires to be intirely free from Perjury, should diligently weigh the Sence and Force of every Word contained in the Oath proposed: That if it ought not to be kept, it may not be taken; but if it be Lawful to be taken, it may be observed, without Fraud and Deceit. For it is impious too hastily to swallow a Sacred Thing, and afterwards to begin an unseasonable Inquisition.

V. The next Enquiry is concerning Words which are *Dubious*; as to which there are three Cases.

The First relates to *Spontaneous Oaths*, in which what is dubious is to be explained by the Person who takes the Oath.

The Second Case is concerning *Imposed Oaths*, or such as any one of his own Right, or on pretence of Right, requires from another. Such are those which are enjoined to Subjects by their Governors, or appointed by Laws; as also those which are used in Covenants, Treaties, and

* 1. qu
Reffiffin
sundim
lem jura
Expe
n esse p

and other Civil Contracts. All such Oaths ought regularly to be understood in that Sence, which was probably intended by the Person to whom they are taken : So that a Man is obliged, under pain of Perjury, to fulfill what he has promised (if the Thing be Lawful and Honest) according to the Intent of him who requires the Oath. * *Verba intelliguntur secundum mentem & intentionem ejus cui fit juramentum*, says the Civilian. The Words are to be understood according to the Mind and Intention of him to whom the Oath is taken. The Reason is, because this kind of Oath is used, that He to whom a Man swears, may have some Assurance, that what is promised shall be fulfilled : But he can have no Assurance at all of This, if the Words of the Oath are not to be understood according to his own Mind, but only according to the Mind of him who swears. For the Case is very different, where the Debt is founded in a Promise, and where the Promise is founded in a Debt. God himself, who of Right is Debtor to no Man, yet by his voluntary Promises makes himself such to us. And He who by a Vow, an Oath, or Spontaneous Promise, obliges himself to any Act of Charity, by so doing contracts a Debt. But because this Debt is not founded in any Right of his to whom the

* l. qui interrogatus. ff. de Inter. ex legit.

Rectissime dici non ambigo, non secundum verbum jurantis, sed secundum expectationem ejus cui juratur, quam novit ille qui jurat, semel jurationis impleri. Augustin. Epist. 224.

Expectationem eorum quibus juratur qui deceperit, non potest esse perjurus. Epist. 225.

Promise is made, but flows only from the free Act of the Person promising: It is very Equitable, that He who is chiefly concerned, should be the Interpreter of his own Mind, how far, and in what Sence, he intended to oblige himself. But on the contrary, where the Promise is founded on some antecedent Debt, namely, a Debt of Submission and Obedience from the Authority of a Superior, or a Debt of Justice and Covenant from the Agreement of Parties; because He to whom the Promise is made has a Right of requiring it, and it chiefly concerns him that it should be performed: Therefore Reason requires, that the Obligation should be judged of by his own Interpretation of it, rather than by that of the Person promising.

The Third Case is, where the Person who tenders the Oath, requires only that a Man should swear according to such Words, and leaves it to him to understand them in what Sence he pleases. An Oath offered on this Condition is to be condemned on Three Accounts. 1. In respect of the Oath it self, in which in the first place Truth is required: But a Sentence of an indefinite and ambiguous Meaning, before Distinction made, is not a true Proposition; nay, it is no Proposition at all; since a Proposition, according to its Definition, ought *to signify something True or False without Ambiguity.* 2. In respect of him who gives it: For the proper End of an Oath is, that He to whom a Man swears, should have some Assurance concerning a Thing before uncertain: But what Assurance

Assurance can be had from Words of an uncertain Meaning? 3. In respect of him who takes it, who thereby prepares either a Scandal for his Neighbour, or a Snare for himself. For it cannot be imagined to what this Collusion can tend, unless it be, either that by our Example others may be induced to take the same Oath, tho' with a reluctant Conscience; or that by Virtue of such an Oath something else may hereafter be required of us, which may be either Unlawful or Inconvenient. The former is to lay a Scandal before our Neighbour; the latter is to spread a Snare for ourselves. A prudent Man therefore ought to take Care, not to suffer himself to be imposed upon by these Artifices, and to avoid swallowing the Bait, under which he may be assured there lies a Hook. In a Word, that all Things may be done as they ought in swearing, it is absolutely necessary, that both Parties concerned, should be fully agreed about the Meaning of the Words: Which according to the Ancients, is *liquido jurare*. And This may suffice as to the *Form* of an Oath.

VI. The *End* of an Oath remains to be spoken to; concerning which I shall be very brief, there being but two Cases which require our Consideration.

The First is, when a Man promises a Thing Lawful in it self, but for an Evil End. To this it is to be said, 1. It is simply Unlawful, to promise any Thing, tho' in it self never so Lawful, for an Evil End. 2. If a Man swear to give any Thing

Thing of Value to another for an Evil End, without mentioning it, he is obliged to perform his Promise: But if the End be mentioned, he is not obliged. The Reason is, because it is Lawful to give a valuable Thing to another: But it is Unlawful to give it upon a base or wicked Condition. 3. If a Man has promised any Thing upon a wicked Condition, and that Condition has been performed, he is obliged to fulfill his Promise, if the Thing promised be Lawful. From which it appears, that an Unlawful Oath, concerning a Lawful Thing, may oblige.

The Second Case respects the Intent or Design of the Person swearing; not That, which relates to *the Matter of the Oath*, as in what Sence, and to what he intends to oblige himself; for This we have dispatched: But That, which relates to *the Act of Swearing*, as whether a Man intends to oblige himself thereby, or not. And here we are to enquire, Whether a Person deliberately swearing, and not intending thereby to oblige himself, be nevertheless obliged? Most of the Schoolmen and Casuists before *Cajetan* determine this in the Negative: But He, and those who have followed him, with greater Reason, in the Affirmative. For the Act of Swearing, is of it self Obligatory, and proceeded from a deliberate Mind: Therefore the Obligation will necessarily follow, unless it be otherwise hindered. Since then the Obligation flows necessarily and naturally from the Oath, it is not in
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the Power of Man to hinder or remove it: For no one, when the Natures of Things are laid down, can hinder the necessary Effects of them. Would not He deserve to be laughed at, who being about to set his Hand and Seal to a Bond, should declare, that he had no design of obliging himself thereby? Would he not, notwithstanding this Profession of his Design, be nevertheless *ipso facto* bound? In like manner, He who swears, is by the very Act of Swearing obliged, whatever he either intends, or professes to intend: Because, whoever intends the Cause, is presumed to intend also the necessary Effect of it.

CHAP. VII.

The several Ways by which the Obligation of an Oath may be dissolved.

I. **H**AVING answered several difficult Cases in the three foregoing Chapters, I shall in this, consider the Ways, by which, the Bond or Obligation of an Oath, which appears to be so strict and sacred, may be taken away or dissolved. Concerning which, we are to observe *First* in general, that the Solution of this Tie is peculiar to a Promissory Oath, and has no place in an Assertory. In every Oath, whether Assertory or Promissory, there must be Truth: but with this Difference, that one Truth alone for the Present is sufficient to the former, whereas

whereas in the latter a double Truth is required; namely, one for the Present, and another for the Future. *The Present Truth* respects the Act of Swearing, and consists in This, that the Person who swears, do while he swears, speak true; viz. That his Mind agree with his Words, and that he design to observe what he promises. Which Act of Swearing in a Promissory Oath, does, as to Truth and Falsehood, altogether agree with the Act of Swearing in an Assertory Oath. For the Matter of this Truth in either Act, being concerning the Present, does, as it were, pass into a sort of immutable Necessity; forasmuch as the Oath as soon as ever it was taken, was immediately either True or False: Which Truth or Falsehood, as soon as the Act is once past, it is as impossible to change or alter, as it is to make That undone which has been once done. That Obligation therefore, by which the Person swearing is bound for the Present to speak true, falls upon the Act of Swearing, and is inseparably joined to it, and consequently cannot be loosed or separated from the Oath: And besides this Obligation for the Present, there is no other in an Assertory Oath, because the Matter of it is something either past or present.

But in a Promissory Oath, the Matter of which is a Thing to be performed hereafter, there is also a *Future Truth* required, which respects the Matter of the Oath; and consists in This, that the Person swearing do make That to be true which he has promised, namely,
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by performing it. Since therefore the Matter of such an Oath, being something future, is, by reason of the Uncertainty of future Events, exposed to great Change and Alteration; hence it is, that the Obligation which rests upon this Matter, is also mutable and separable from the Oath. And This is what we call the Solution of the Bond or Tie. From whence also follows That which is to be observed in the *Second* place; that the Solution of the Tie in a Promissory Oath, is not to be understood in respect of the prior Obligation, which belongs to *the present Truth*, and is common to both Kinds: But it is to be understood only in respect of the posterior Obligation, which belongs to *the future Truth*, and is proper and peculiar to the Promissory Kind. Every Person swearing to a Promise, is by Virtue of the Act it self, simply and indissolubly *obliged for the present* sincerely to design to perform hereafter what he has promised: But after he has sworn, it may happen upon many Accounts, that he *may not be obliged for the future* to fulfill That hereafter, which he had promised and designed. In a Word, He is always Perjured, who does not intend what he promises: But He is not always Perjured, who does not perform what he has promised.

But that what has been promised upon Oath may Lawfully, and without Perjury, be left unperformed, must happen from one of these Causes; either because there was no Obligation at first; or because (the Tie being

unloosed) it has been since taken away. If the Thing promised was either *Impossible* or *Unlawful*, the Oath concerning it induced no Obligation, and needs no Solution but Repentance : Forasmuch as the Person by so swearing committed a Sin, but bound himself with no Tie. For we have shewn before, that to a Thing Impossible, and a Thing Unlawful, there is no Obligation. The Solution therefore of a Tie supposes an antecedent Obligation : And signifies, that it is some way or other afterward so taken away, or at least hindered, that, whereas a Man was bound so fast by his Oath, that he could not, under pain of Perjury, do otherwise than he had promised, he is now no longer obliged to perform his Promise. That therefore which we are now to do, is to find out some certain Way, whereby a Man, who has obliged himself by Oath to do any Thing, may be secure in his Conscience, that he is freed from that Bond, and no further obliged to do what he has promised. Of which there are five Ways assigned, each in their order to be examined.

II. The First is *Dispensation* : Which, as the Word is commonly taken, signifies an Exemption of any Person from the common or general Law, granted out of a special Indulgence, by One having Authority. And the Right of *Dispensation* is founded in that Equity, which requires, that the Rigor of the Law should sometimes be relaxed. For since Laws must necessarily be made in general Words, to re-

spec

spect what is commonly, and for the most part good and profitable to the Publick, which yet may often happen to be unprofitable, or at least not so good for it : It is thought Equitable, where the Observation of the Law will be very grievous and inconvenient to any private Person, and the Publick cannot be much damaged by his not observing it ; that there the Prince, or some other Lawful Superior, should have a Power of determining, that in such Case the Law is not to be observed : And This is to Dispense in Law. Whatever Power *Secular Princes* have of dispensing in their own Laws, the same the *Popes* claim of dispensing in Vows and Oaths. But that the Obligation of an Oath is simply indispensable, so that neither the Pope, nor any other Person whatsoever, has any Power of dispensing with it, I shall evidently prove. 1. Because the Obligation of an Oath is from Divine Natural Law : But Natural Law is not subject to Human Cognisance ; since God alone is the Author, and Lord of Nature, and it could never yet be shewn, that God has granted to any Order of Men, Authority to dispense in those Things which belong to Natural Law. 2. Because if this Dispensing Power be once allowed, the chief End of an Oath, which is the Assurance of the Thing promised, would be entirely overthrown. For He to whom another swears, can have no Assurance that what is promised shall be made good, if the Person swearing may be dispensed with from performing.

ing. 3. Because an Oath, at the very same Time that it lays an Obligation on the Person swearing to perform his Promise, does likewise give the Person sworn to, a Right to the Thing promised: Which two Effects of an Oath are so closely joined together, that they both subsist, or are destroyed together. If therefore it be supposed, that the *Obligation* of the Person swearing, could be taken away by a Dispensation, it would follow, that the *Right* also of the Person sworn to, is taken away by the same. And it would also follow further, that such Dispensation is either *Vain* or *Unjust*: Vain and Superfluous, if the Person sworn to be willing; Unequal and Unjust, if he be unwilling. For if he be willing, the Obligation may be remitted, even without a Dispensation, (as will appear presently): but to take away a Man's Right, he being unwilling, is Injustice.

4. Because, in a Promissory Oath there is an Obligation contracted, not only to a Man's Neighbour, as it is *Promissory*; but also to God, as it is an *Oath*. Therefore supposing, but not granting, that the Pope may have Power to take away that Obligation, whereby one Man is bound to another, in respect of a Promise: Yet the Presumption is not to be borne with, if Dust and Ashes should assume to it self an Authority to take away that Obligation, by which a Man is bound to God as a Witness and Avenger. *Lastly*, Because an Human Dispensation is a Business which belongs to *foro Externo*: But the Obligation of an Oath

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is Internal, within the Conscience, which is subject to God alone as Judge, and over which Man has no Authority. Whoever therefore claims to himself a Right of dispensing in Oaths, assumes to himself a Divine Power, by erecting for himself a Tribunal in *foro Interno*, and exercising Dominion over the Consciences of Men. And the Dispensation it self is invalid, and of Right none at all : As a Sentence, pronounced by a Judge out of his own Court, is to all Effect of Law utterly invalid.

III. The second Way is *Commutation* ; which is the Translation of the Obligation from one Thing to another ; which, whether greater, or less, or equivalent, seems to be more advantageous upon some Account or other. And it differs from a Dispensation as a Part does from the whole. According to which, some Casuists hold, that any Man of his own Authority may change a Vow, or an Oath, into something evidently better. But this Doctrine of Commutation is built upon that of Dispensation, and must fall with it. For as the Obligation of an Oath cannot be taken away as to the whole by Dispensation, so neither can it be taken away in part by Commutation, without the Consent of all Parties. But the Consent of him to whom the Oath is taken, is chiefly requisite ; because he has acquired a Right, which ought not to be taken from him, without his Consent. Neither is the Case of a Vow, and an Oath, in respect of Commutation the same. For since a Vow is made only

ly to God, the Person who made it, may perhaps have a Liberty of changing it into something evidently better and more grateful to God, there being no Injury done thereby to any third Person: Whereas in an Oath, which is made to a Man, it would be an Injury to him, if without his Consent, and contrary to his Will, the Thing promised should be changed into something else. For it is unjust, that a Person should be compelled against his Will, to accept one Thing instead of another, which is his due. By neither of these Ways therefore can the Obligation of an Oath be taken away.

IV. But this Obligation may be dissolved by the three following Ways; of which the First is *Irritation* of a Superior, as the Casuists barbarously call it; which signifies the Act of a Lawful Superior, by which, of his own Authority, he makes Void, and annuls the Oath of an Inferior taken without his Consent. That a Lawful Superior may annul the Vows and Oaths of those who are under his Authority, *Moses* teaches at large, *Numb.* 30. The Reason is, because He who is subject to another, is not *sui juris*, has no Power of obliging himself in those Things in which he is subject, unless by the Will of his Superior; and therefore ought not by any Act to bring himself under an Obligation, without his Consent, either express, or reasonably presumed. For the *Rights* of Superiors over Inferiors, and the *Duties* of Inferiors to Superiors, are, by the eternal and immoveable Law of God, of perpetual

petual and indispensable Obligation. Which an antecedent Obligation, according to our third Rule, hinders the Effect of a subsequent Oath, and makes it not oblige. For a Prior Obligation always hinders a Posterior contrary to it.

In this Case then we are to observe. 1. That an Inferior, as to those Things in which he is subject to another, ought not to swear that he will do any Thing, without at least the presumed Consent of his Superior. 2. If he have sworn, and the Thing be Lawful, he is obliged to perform it, so long as it does not appear to him to be contrary to the Will, Dignity, or Interest of his Superior. 3. That if the Superior, by his express Consent, either antecedent or subsequent, has once confirmed the Promise of his Inferior, he cannot afterwards make it void. 4. If the Superior, as soon as ever he knew the Matter, did peremptorily declare his Dissent to the Inferior, and forbid the doing what he had sworn : Then the transitory Obligation of the Oath did immediately cease ; and the Inferior is bound by the Obligation of Duty, which is permanent and perpetual, to do otherwise than he has sworn. If therefore any One, subject to the Authority of another, suppose of a Prince, a Father, or a Master, should either of his own accord, or induced by Fraud or Force, take an Oath, to which he believes his Prince, Father, or Master, if present, would not consent : Such Person has by swearing offended against his Duty, and is altogether bound
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not to keep his Oath, as being contrary to it.

V. The next Way by which the Obligation may be void, is, The *Cessation* of the Matter, or some remarkable Alteration as to the principal Cause of the Oath. For the Matter may then be said to cease, when the State of Things, between the Time of swearing and the Time of fulfilling, is so changed, that if this Alteration could have been foreseen, when the Person swore, he would not have sworn at all. In this Case the Answer is short: That, whenever the Matter of a Vow or Oath ceases, the Obligation ceases together with it: As in Natural and Artificial Things, when Matter fails, the Action of the Agent must necessarily fail too. If therefore a Soldier swear Obedience to a General in Time of War; the War being ended, and he ceasing to be General, the Soldier is not bound by his Oath to yield him Obedience any longer. So if a Father swear, never to alter his Will, in which he has made his Eldest Son his Heir; if He afterwards discover, that this Son designed to poison him, he is not then bound by his Oath, but may, notwithstanding that, alter his Will, and appoint another Heir. The Reason is, because the Root of the Obligation being taken away, the Obligation springing from it must needs be taken away with it: And the *Matter* which gave cause to the Oath, was the Root of the Obligation, which followed from that Oath.

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VI. The last Way by which this Obligation may be removed is, *Relaxation* of the Party, to whom the Oath is taken. Concerning which we are to observe, 1. That this Relaxation takes place only in Oaths, and Human Contracts, but not in Vows. The Reason of which Difference is, because Vows are made to God as a Party: But nothing can be remitted by Man, but what is made to Man. 2. If a Man swear, with respect to the Honour, Advantage, or Good of another, the Oath does not oblige, unless the Person for whose sake it is taken, approve and accept of it. 3. Such an Oath, if He to whom it is made accept of it, and would have it observed, cannot be remitted * by any third Person whatsoever. The Reason is, because no Man can take away a Right acquired by another, without his Consent. From whence follows plainly That which was said before, that the Obligation of an Oath cannot, without the Consent of the Parties, be taken away by the Dispensation of a Third Person. 4. If the Person to whom the Oath is taken, remit, and would not have it observed, He who took it is immediately discharged from the Obligation, and is not bound in Conscience to do what he had before sworn. For every Man may recede from his own Right, and forgive that which is due to him. And when the

Non debet alii nocere, quod inter alios actum est. l. 10. ff. de Jurejur.

Debt is paid, the Obligation does necessarily cease; since the Term of the Obligation is the Payment of the Debt, as is evident from the Definition of an Obligation. If it be objected, that the Debt is not here paid, because the Promise is not fulfilled: It is answered, that to all Effect of Law, it is the same Thing, whether the Promise be really fulfilled, or accounted to be so by him who is chiefly concerned. Because the *Acceptation* of the Person concerned, is to be interpreted as the *Acceptance of the Thing*: And so, the Matter as it were ceasing, the Obligation ceases, as in the precedent Case. If what was said in the Case of an Oath extorted by Fear, should be here objected, namely, that altho' the Obligation to Man may be taken away by a Relaxation, yet the Obligation to God cannot. To this it is answered, That by the remitting the Bond of the Oath, after the manner laid down, there is no Injury done to God, as there is in violating a forced Oath: Because the Promise made precisely in favour of another, is directed towards God only as the Witness to it, and the Avenger of the Violation of that Faith which is engaged to another: Which Faith, if a Man has not violated, but has satisfied his Promise, he is loosed from all Obligation, both to God and Man. 5. The Solution of the Obligation, by the Relaxation of the Party, is to be extended so far only as the Person remitting shall please. 6. The Relaxation of the

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the Party takes away the Obligation so far only as it concerns himself: But it is not at all Valid to the Prejudice of a third Person. The Reason is, because every one may by his own Act give up as much of his own Right as he thinks fit: But no Man can take away any Thing from another's Right, without his Knowledge and Consent. Every Man therefore ought so to recede from his own Right, as to preserve that of others intire. Thus *Abraham*, Gen. 14. after his Victory over the four Kings, receded from his Right in those Things acquired by Conquest, when he gave up his Part of the Spoil to the King of *Sodom*: But reserved at the same Time to his three Confederates in the War, their just Portion.

The Sum of what has been said concerning the Solution of the Bond of an Oath is briefly this. The Obligation of an Oath cannot be taken away, either by the *Dispensation* of a Superior, or by any *Commutation*, but the Person swearing is notwithstanding bound in Conscience to perform what he has promised. But this Obligation may be rendered void, either by the Authority of a Superior having Lawful Power, or it may cease together with the Matter, or it may be remitted by him to whom the Promise is made, so as intirely to lose its obliging Power.

VII. I shall end this Discourse with two Practical Conclusions. The first is, *It is a grievous Sin unduly to exact an Oath of another.* And He certainly unduly exacts an Oath, 1. Who com-

pels another to take an Oath, which is not either enjoined by written Laws, or received by Custom, and established by the Prescription of a long Time without any Intermission or Contradiction. 2. Who demands of another an Oath, which is evidently repugnant, or which, according to the plain and common Sence of the Words, seems to be repugnant, to some Oath Rightly and Lawfully taken by him before. 3. Who compels a Man to swear to a Thing Unlawful, such as is contrary to the Duty owing to God, or to Superiors, contrary to the Laws of the Land, or to good Manners, or on any other Account dishonest, and which ought not to be performed. 4. Who tenders an Oath of a doubtful Sence, or in any manner captious; whereby he may lay a Snare for the Conscience, Life, Liberty, or Estate of his Neighbour. 5. Who without necessity, either compels by Fear, or urges by Authority, or by Counsel, Example, or Deceit, induces another to take an Oath, which he knows to be contrary to the Dictate of his Conscience. It is much to be wished, that All who are in Power would remember, how black and indelible a Character of Infamy has been fixed on *Jeroboam the Son of Nebat*, because he *made Israel to Sin*; and how grievously They provoke the Anger of God against themselves, who abuse that Power, which God has given them for the Benefit and Advantage of others, to their Ruin and Destruction.

The Second is, *An Oath is not to be taken, either with a reluctant, or a doubting Conscience.* This is proved, 1. from *Rom. 14. 23. Whatsoever is not of Faith, is Sin.* 2. From the forementioned place of *Jeremiah*, according to which a Man ought to swear *in Judgment*; which certainly He does not, who swears contrary to the Judgment of his Conscience. 3. Whoever swears thus, must of necessity do it, either out of Fear of Temporal Evils, or upon the Prospect of Temporal Advantage. But how unworthy is it of a Christian, to prefer Interest to Conscience, the Body to the Soul, the Conveniences of this Life to the Happiness of the other, and external Ease and Quiet, to internal Peace and Serenity of Mind! 4. He who swears after this manner, evidently exposes himself to the Sin of Perjury. For He who, thro' Hope or Fear of Temporal Advantage or Inconvenience, can be induced to take an Oath which he ought not, will very probably, by the like Hope or Fear, be induced not to fulfill what he has sworn. But Perjury was always reckoned, even by the Heathens themselves, amongst those grievous Crimes, which would bring the Anger of the Gods, not only upon Those who were Guilty, but also upon their Posterity, and even upon whole Nations. Upon which Account, We, who worship the one True God, who has solemnly declared, that he *will not hold him guiltless who taketh his Name in vain*, ought to be the more afraid,

afraid, (there being, wherever we turn our Eyes, so luxuriant a Crop of Oaths and Perjuries, and long since white for the Harvest,) lest God, the most Just Judge, should immediately put in the sharp Sickle of his Judgments, and intirely cut off so Perfidious and Profane a Nation. We have already perceived some Instances of our Heavenly Father's Displeasure; and have just Reason to fear, that his infinite Patience, wearied out by our Sins, will be turned into Fury. It is not easy to say, particularly by what Sins, where all kind of Wickedness does so abound. But really, if a Man seriously consider, from the Time which God has begun more nearly to scourge us, how little we have repented of the grievous Sins of Swearing and Forswearing, nay, how much rather the unbridled Licence of Oaths and Blasphemy on one hand, and of Perjury on the other, has prevailed and increased: One cannot but join in the Complaint of the Prophet, *Jer. 23. 10. Because of Swearing the Land mourneth.*

Since therefore these Things are so, Men, Brethren, and Fathers, if we desire either the Peace of Church and State, or that of our own Consciences, let us in the first place ourselves take care not to contemn the Divine Name, nor to violate our Faith, let us altogether decline unnecessary Oaths, let us constantly refuse such as are unduly offered us by others, let us faithfully fulfill those which we have duly and rightly taken; let us in the
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next place, as much as in us lies, endeavour to repress this Licence of Sinning in others; and let us lastly daily beseech God, that being instructed by his Rod, and humbled under his Almighty Hand, we may fly to his Mercy, acknowledge his Justice, and implore his Grace, to the Forgiveness of our Sins, the Amendment of our Lives, and the Salvation of our Souls, by and thro' the Merits of Jesus Christ our Lord. To whom with the Father, and the Holy Ghost, be ascribed all Power, Dominion, and Glory, for ever and ever. *Amen.*



To whom the Father, and his
 Spirit, be ascribed all
 honor, glory, and
 dominion, forever and
 ever, Amen.

